

REMARKS

By this Amendment, Applicant has amended claims 17 and 36 and canceled claim 34. The amendments to claims 17 and 36 are supported in the originally filed application, for example, in the as-filed specification in Fig. 1. No new matter has been added.

As an initial matter, Applicant would like to thank Examiner O'Neill and her supervisor for the courtesies extended to Applicant's representative during the telephone interview conducted on June 13, 2011. The amendments and remarks presented in this response reflect the issues discussed during the interview.

In the Office Action, claims 17, 19-21, 24, 25, 27, and 29-31 were rejected under 35 U.S.C. § 103(a) over U.S. Patent Application Publication No. 2002/0030064 to Lacout ("Lacout") in view of U.S. Patent No. 6,343,717 to Zhang et al. ("Zhang"); claims 22 and 23 were rejected under 35 U.S.C. § 103(a) over Lacout and Zhang in view of U.S. Patent No. 5,702,035 to Tsao ("Tsao"); claim 26 was rejected under 35 U.S.C. § 103(a) over Lacout and Zhang in view of U.S. Patent No. 7,416,355 to Tsaur ("Tsaur"); claim 28 was rejected under 35 U.S.C. § 103(a) over Lacout and Zhang in view of U.S. Patent No. 5,927,884 to Kao ("Kao"); claim 28 was rejected under 35 U.S.C. § 103(a) over Lacout and Zhang in view of U.S. Patent Application Publication No. 2004/0165935 to Kaufmann et al. ("Kaufmann"); claims 32 and 33 were rejected under 35 U.S.C. § 103(a) over Lacout and Tsao in view of U.S. Patent No. 6,432,147 to Dias et al. ("Dias"); and claims 34 and 36 were rejected under 35 U.S.C. § 103(a) over Lacout, Zhang, and Dias.

As discussed during the interview and agreed to by the Examiner and her supervisor, none of the cited references discloses or suggests "i) at least one container

holding a coloring composition for forming a hair coloring product, said composition comprising at least one hair colorant; and ii) at least one test device designed to perform a test and comprising a tube having a sealed internal space containing at least one hair colorant of the coloring composition, at least one hair colorant in [an] at least one test device being fluidly discrete from the at least one hair colorant in the at least one container," as recited in independent claim 17. Claim 36 contain similar recitations.

The Office Action asserts that "[i]t would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the testing device of [Lacout], to be the liquid stick of Zhang et al. in order to provide a more sanitary testing stick." Office Action at 3. However, Lacout teaches away from having at least one test device designed to perform a test and comprising a tube having a sealed internal space containing at least one hair colorant of the coloring composition, and the at least one hair colorant in the at least one test device being fluidly discrete from the at least one hair colorant in the at least one container. Specifically, Lacout teaches having a device 1 containing an oxidizing agent in an upper first compartment 2 and a dye in a lower second compartment 30. See paragraph [0049] of Lacout. Furthermore, Lacout teaches that the second compartment 30 has a sampling orifice 101 for taking a test sample of the dye in the second compartment 30 using an applicator member 104 that may be in the form of a spatula, a brush, or a block of porous material. See Lacout at paragraphs [0060] and [0061]. Lacout teaches unscrewing a cap 103 connected to the applicator member 104 to withdraw the sample of the dye from the second compartment 30. See Lacout at paragraph [0061]. Finally, and in direct contrast to the claimed device and method, Lacout discloses that having "a small bottle containing a small

amount of the dye product packaged with the dye device" for testing is not wanted because the "small bottle, aside from the additional space it takes up in the final packing of the device, increases the overall cost of the final package." Paragraph [0003] of Lacout. Therefore, Lacout teaches away from having at least one test device designed to perform a test and comprising a tube having a sealed internal space containing at least one hair colorant of the coloring composition, and the at least one hair colorant in the at least one test device being fluidly discrete from the at least one hair colorant in the at least one container.

For these reasons, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 17 and 36. Since claims 19-33 depend from independent claim 17, Applicant also respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejections of these claims for at least these same reasons.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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